

1  
2  
3  
4  
5 IN THE UNITED STATES DISTRICT COURT  
6 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
7

8 RAY VANNY, et al.,

No. C 12-05752 SI

9 Plaintiffs,

**ORDER VACATING HEARINGS AND  
STAYING PROCEEDINGS**

10 v.

11 BRISTOL-MYERS SQUIBB CO., et. al,

12 Defendants.  
13 \_\_\_\_\_/

14 The motion by plaintiffs to remand the case to state court is scheduled for a hearing on March  
15 29, 2013.

16 Subsequent to a conditional transfer order by the Judicial Panel on Multidistrict Litigation  
17 (“MDL Panel”), for the transfer of this case to the MDL in New Jersey, defendants filed a motion to stay  
18 proceedings, which is scheduled for a hearing on April 4, 2013. Plaintiffs also have an unresolved  
19 motion to relate this case to a similar case before Judge Chen.

20 Pursuant to Civil Local Rule 7-1(b), the Court determines that these matters are appropriate for  
21 resolution without oral argument and VACATES the hearing scheduled for April 4, 2013. For the  
22 reasons set forth below, the Court STAYS the proceedings until the pending conditional transfer matter  
23 is resolved by the MDL Panel or the motion to relate the cases is resolved by Judge Chen.

24 On November 5, 2012, plaintiffs filed this action in the Superior Court of California, County of  
25 San Francisco, alleging injuries caused by the use of the prescription drug Plavix. Three days later,  
26 defendants removed the case to this Court. Eight days later, plaintiffs moved to relate this case to a case  
27 before Judge Chen, *Caouette v. Bristol-Myers Squibb Co.*, 3:12-cv-01814-EMC (N.D. Cal.), and the ten  
28 other Plavix injury cases that had already been related to that case. Docket No. 8. On February 14,

1 2013, plaintiffs filed a motion to remand the case to state court. Docket No. 16.

2 On February 12, 2013, the MDL Panel in *In Re Plavix Mktg., Sales Practices & Prods. Liab.*  
3 *Litig. (Plavix No. II)*, MDL No. 2418, consented to transfer the MDL litigation to Judge Wolfson in the  
4 New Jersey District Court for coordinated or consolidated pretrial proceedings. Deft.'s Mot. to Stay,  
5 Ex. B. On February 20, 2013, the MDL Panel conditionally transferred this case to the Plavix MDL in  
6 New Jersey. *Id.*, Ex. C. The conditional transfer order also allowed any party to object to the transfer  
7 within seven days of the entry of the order, and the transfer would be stayed pending resolution of the  
8 objection. *Id.* On February 26, 2013, plaintiffs filed an opposition to the conditional transfer. *See*  
9 *Plavix No. II*, MDL No. 2418, Docket No. 79; 83. Defendants' reply is due April 4, 2013. *Id.*

10 The Court has the discretionary power to stay proceedings in its own court. *Lockyer v. Mirant*  
11 *Corp.*, 398 F.3d 1098, 1105 (9th Cir. 2005). In determining whether a stay is warranted, the Court is  
12 to examine the following factors:

13 (1) the interest of the plaintiffs in proceeding expeditiously with this litigation or any  
14 particular aspect of it, and the potential prejudice to plaintiffs of a delay; (2) the burden  
15 which any particular aspect of the proceedings may impose on defendants; (3) the  
16 convenience of the court in the management of its cases, and the efficient use of judicial  
17 resources; (4) the interests of persons not parties to the civil litigation; and (5) the  
18 interest of the public in the pending civil and criminal litigation.

19 *Keating v. Office of Thrift Supervision*, 45 F.3d 322, 325 (9th Cir. 1995); *see also Blue Cross and Blue*  
20 *Shield of Alabama v. Unity Outpatient Surgery Center, Inc.*, 490 F.3d 718, 724 (9th Cir. 2007) (citing  
21 *Keating*, which involved a parallel criminal proceeding, and applying the factors in a parallel civil  
22 proceeding).

23 Here, the factors clearly weigh in favor of granting the stay. Although plaintiffs are opposed to  
24 the stay, it will not prejudice them because a remand motion can just as easily be presented to and  
25 decided by the transferee judge; either the MDL Panel transfers the case to the District of New Jersey  
26 and the motion to remand is decided there, or proceedings resume either in this Court or with Judge  
27 Chen. Furthermore, the stay will likely not last very long, as the briefing schedule has set for the  
28 conditional transfer matter, and so plaintiffs' case will still proceed expeditiously. Thus, the first factor  
weighs towards granting a stay. The burden to on defendant is obviously light, since they are the party  
that moved for the stay. Thus the second factor weighs in favor of granting the stay as well. The third


1 factor also weighs in favor of granting the stay, because conducting proceedings that may be mooted  
2 by a transfer of pretrial proceedings is a waste of judicial resources. Finally, although it is not readily  
3 apparent how persons not parties to this litigation, or the public at large, would be affected by staying  
4 these proceedings pending determination of the motion to dismiss the conditional transfer order, the  
5 efficient use of judicial resources is certainly not to their detriment. Therefore, with the first three  
6 factors weighing in favor of granting the stay and the last two factors neutral, the Court finds it  
7 reasonable to stay proceedings here until the MDL Panel or Judge Chen resolves the currently-pending  
8 motions to transfer or relate this case.

9 Contrary to plaintiffs' argument, there is no rule that the district court must first consider the  
10 jurisdictional issues raised in a motion to remand, as the MDL court or Judge Chen is capable of  
11 considering the jurisdictional issues after the case transferred or related. *See, e.g., Aiken v. Bristol-*  
12 *Myers Squibb Co.*, No. CV 12-05208 (N.D. Cal. March 14, 2013) (order granting motion to stay) (citing  
13 various cases in this and other jurisdictions where courts stayed actions pending a transfer to an MDL,  
14 including motions to remand). Moreover, the MDL Panel's initial concern with transfer is not the  
15 motion to remand, as plaintiffs have suggested, but an issue involving CAFA, which has since been  
16 resolved. *See id.* Therefore, there is no impediment to staying the case, and staying the case would  
17 promote judicial economy.

18 Accordingly, the Court VACATES the hearings set for March 22, 2013, and April 4, 2013, and  
19 STAYS the proceedings, pending the MDL Panel's determination of the motion to transfer or Judge  
20 Chen's resolution of the motion to relate cases. The parties are directed to inform the Court within  
21 seven days of the MDL Panel's resolution or Judge Chen's resolution. This resolves Docket Nos. 20,  
22 22.

23  
24 **IT IS SO ORDERED.**

25  
26 Dated: March 25, 2013



27 SUSAN ILLSTON  
28 United States District Judge